

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Transition Process For 700 MHz)	PS Docket No. 12-94
Public Safety Broadband Waiver)	
Recipients)	

COMMENTS OF THE STATE OF NEW MEXICO

The State of New Mexico (“SONM” or “New Mexico”) hereby submits the following in response to the April 6, 2012 Public Notice (DA 12-555) in which the Public Safety and Homeland Security Bureau (“Bureau”) requests comments on the transition process for 700 MHz public safety broadband waiver recipients in light of the recent passage of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”)¹. The new law requires the Commission to assign a license for the existing public safety broadband spectrum (763-769 MHz/793-799 MHz) as well as the “D Block” (758-763 MHz/788-793 MHz) to the newly created First Responder Network Authority (“FirstNet”) for public safety services. The Spectrum Act also gives the Commission broad authority for resolving issues in the public interest associated with the assignment of the public safety license. The Commission should exercise that authority to assure the continuing progress of waiver recipients in establishing operational test beds for the deployment of interoperable 700 MHz public safety infrastructure and equipment.

As a Commission-approved early builder waiver recipient, SONM is currently authorized for early deployment of the New Mexico portion of the nationwide 700 MHz public safety

¹Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012). (“Spectrum Act”).

broadband network. New Mexico has a lease with the Public Safety Spectrum Trust (“PSST”) to operate on the existing 700 MHz public safety broadband spectrum and is a grant recipient of Broadband Technology Opportunity Program (“BTOP”) funding to construct a public safety broadband network using the spectrum. Consistent with its obligations under the Spectrum Act and with its prior public interest rulings relating to the waiver recipients, the Commission, in transitioning a license to FirstNet for existing and D Block public safety spectrum, should do so with a two year lease commitment to New Mexico, as well as other waiver recipients, for continued use of this spectrum. If the New Mexico waiver and lease are not continued, New Mexico could be at risk for losing some of its BTOP funding. All leases associated with the license assignment should be conditioned on a leasee’s continuing commitment of meeting the technical and interoperability standards established by the Commission and/or FirstNet.

I. As An Authorized Early Builder And BTOP Grant Recipient New Mexico Is Committed To Working With The Commission And FirstNet In Assuring Interoperability In the State Of New Mexico.

The Commission granted New Mexico a waiver in May 2010 to commence early deployment of the New Mexico portion of the nationwide system and subsequently approved a lease agreement entered by New Mexico with the PSST for statewide use of the spectrum.² Funding for the initial phase of the New Mexico statewide system is being provided by a BTOP grant being administered by the National Telecommunications & Information Administration (“NTIA”).

²See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, *Order*, PS Docket No. 06-229, 25 FCC Rcd 5145 (rel. May 12, 2010) (“Waiver Order”); *Also See* Public Safety and Homeland Security Bureau Approves Long Term De Facto Transfer Spectrum Lease Agreements filed by Conditional Waiver Recipients to Establish 700 MHz Interoperable Public Safety Wireless Broadband Networks, *Public Notice*, DA 10-1678 (rel. Sept. 2, 2010).

Under the grant, SONM is making critical cash and in-kind contributions to facilitate the initial buildout. NTIA awarded SONM \$38.7 million in BTOP grant funding, with a \$17 million state-funded match that will pay for completing the digital upgrade of a statewide 99-tower microwave backbone as well the initial deployment of 700 MHz public safety broadband service in Santa Fe and Albuquerque. Four LTE sites will be constructed in Santa Fe and eight LTE sites in Albuquerque. The total cash contribution from SONM for the BTOP grant project is \$5.4 million.

The microwave network of 99 towers will serve as base station locations and points of access for the 700-MHz broadband deployment. Once the digital upgrade of the microwave backbone is completed, the network will be utilized to backhaul 700 MHz broadband traffic. The initial phase of the 700 MHz LTE system will bring much needed affordable public safety grade broadband services to first responders, emergency care providers and governmental anchor institutions in Albuquerque and Santa Fe. It is anticipated that, in line with the Spectrum Act, this same quality of broadband services will later be extended to public safety and governmental users throughout New Mexico.

As a rural, border state with a number of Indian Tribes, as well as significant federal infrastructure including two national labs, a major national test range, and extensive federal forests, New Mexico has a keen interest in the successful implementation of statewide broadband coverage as part of the interoperable nationwide public safety broadband network. The upgraded microwave backbone will allow broadband coverage in rural regions of the State that would otherwise be without broadband access.

Construction of the microwave transport system designed to accommodate 700 MHz LTE public safety traffic throughout New Mexico is well under way. Based on discussions with

NTIA and consistent with informal NTIA guidance following passage of the Spectrum Act, New Mexico is considering releasing a “gated” or “staged” request for proposal (“RFP”) for the next phase of the BTOP grant, and this would happen within the next month. This RFP process will be designed to minimize wasted efforts and/or expenditures under the BTOP grant. Phase I of the soon to be released RFP would address LTE Project Planning and Management; Phase II would focus on Site Assessment/Infrastructure and System Design; and Phase III would address LTE system deployment. SONM is committed to continue working with the Commission, NTIA and eventually FirstNet to assure that the New Mexico 700 MHz buildout will meet all required interoperability standards. In view of this commitment, New Mexico’s RFP will specifically request that vendors assure adjustments to system design and component selection, if necessary, to meet interoperability standards later adopted by FirstNet.

New Mexico has been working closely with the public safety user community in planning its LTE deployment, completing a needs assessment that forms the foundation for system design and procurement efforts, and in working to establish commitments with the user community. The City of Albuquerque Police Department has indicated its intention to utilize the planned network as its primary data network, fully replacing its aging low-speed data network, and building a new “smart policing” dispatch center that will take advantage of the numerous opportunities afforded by broadband data access. It is critical to the success of this plan that the network be up and running within two years as that is the end-of-life date for the City’s current network, and the network will no longer be serviced by the manufacturer after that date. Accordingly, continuing the New Mexico lease is critical to public safety in the State of New Mexico.

New Mexico strongly opposes any stay of the existing waivers as mentioned in the Public Notice as a possible approach to the transition. Such a drastic step by the Commission will unnecessarily jeopardize New Mexico's BTOP funding, which is time-sensitive, and negatively impact the creation of employment opportunities which is a critical goal of the "Recovery Act"³ from which the BTOP program stems. In fact, continuation of the New Mexico spectrum lease is a condition of New Mexico's BTOP grant, and accordingly the existing funding may be jeopardized if there is any interruption in New Mexico's spectrum rights under the lease agreement. As noted below, halting of all deployment efforts will also deprive FirstNet of valuable test bed experience that the Commission found to be in the public interest in granting the waivers.

II. The Commission Has Broad Authority Under The Spectrum Act And Should Use This Authority To extend The Leases For A Two Year Term.

Extension of the New Mexico lease agreement is fully consistent with the Spectrum Act. In the Spectrum Act, Congress grants the Commission exclusive authority to "reallocate and grant a license to the First Responder Network Authority for use of the 700 MHz D block spectrum and existing public safety broadband spectrum."⁴ While the legislation makes clear that the Commission is required to "implement and enforce this title as if this title is part of the Communications Act,"⁵ the legislation is silent on what to do with the existing leases under the transition to FirstNet. This leaves it to the Commission, as the expert agency charged with implementing the Communications Act, to fill the "gap" by addressing all issues relating to the

³ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, *123 Stat. 115* (2009) ("Recovery Act")

⁴ Spectrum Act, §6201 (a).

⁵ Spectrum Act § 6003.

leases in effectuating the assignment of the license to FirstNet.⁶ As part of the Congressional scheme set forth in the new legislation, the Commission has full authority to extend and continue the leases with the early builder jurisdictions as part of the process of transitioning the public safety license to FirstNet.⁷

Under the Spectrum Act, Congress mandates the Commission to “take all actions necessary to facilitate the transition of the existing public safety broadband spectrum.”⁸ The Commission is further authorized to “take any action necessary to assist the First Responder Network Authority in effectuating its duties and responsibilities.”⁹ Thus, there is no question that under the Congressional scheme the Commission is empowered to address the leases as part of the assignment of the license.

While the FirstNet Board is required to be appointed by NTIA by August 22, 2012, the waiver recipient leases are currently scheduled to expire on September 2, 2012, just ten days later. It is unrealistic to expect the Board to be in a position to adequately address the leases by that time. Indeed, it will likely be many months, if not longer, after FirstNet is established, before technical and interoperability standards will be in place that will allow FirstNet to make a fully-informed decision on lease extension. Moreover, it is likely to be two years or more after FirstNet is established before FirstNet will be able to complete planning, conduct procurements, enter agreements with vendors and initiate construction of a nationwide network. Under these circumstances, there is no reason not to extend the leases, and much to be gained by doing so. In

⁶ *Southern Company v. MCI* 293 F.3d 1338, (Eleventh Cir., 2002), at 1343; *Also see Chevron U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842-45, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984).

⁷ As the expert agency charged with interpreting the Communications Act the Commission is entitled to deference in making policy decisions in the course of implementing the Communications Act. *See Chevron, supra*.

⁸ Spectrum Act, §6201 (c).

⁹ *Id.* 6213.

fact, as a cost-recovery service provider, SONM will be able to collect as part of its rates depreciation costs that can be invested in the national interoperable network once FirstNet has promulgated relevant guidance. Accordingly, the Commission should not merely leave to FirstNet the decision on whether to extend the leases, but instead the Commission should immediately act to provide needed certainty by ensuring that the leases will remain in effect after the transition by extending them for an additional two-year period.

In order to facilitate the transfer of the leases, the Commission should authorize any existing waiver recipient wanting to extend its lease to enter into a new two year lease agreement with the current public safety licensee, the PSST. Those lease agreements and the PSST license itself should be expanded to include the existing spectrum as well as the D Block. As a second step, the Commission should assign the public safety license to FirstNet with the leases attached. These leases should be conditioned on the requirement that they meet standards of interoperability established by the Commission, including any interim findings issued by the Interoperability Board, as well as standards later required by FirstNet.

III. Extension Of The Early Builder Waivers Is Consistent With Commission Policy And Is In The Public Interest.

In granting waivers to the early builders, the Commission struck a careful balance allowing waiver recipients to move forward with constructing their respective portions of the nationwide network, while “mitigat[ing] any possible concern regarding ‘prejudgment’” of the larger rulemaking issues.¹⁰ This test bed approach has been working to allow early builders to commence deployment in a fashion that creates a forum for the public safety community to learn from these deployments while maintaining a course towards nationwide interoperability. There

¹⁰ *Waiver Order* at ¶11.

is no reason to change this carefully structured and well-reasoned approach because of the new legislation.

As the Commission recognized in the *Waiver Order*, “These early deployments may also assist the Commission in understanding what additional issues may arise for public safety in connection with the larger goal of establishing a nationwide interoperable broadband network and serve better to inform all parties as we proceed with the related rulemaking proceedings.”¹¹

The Commission observed further,

We also recognize that as these early deployments move forward, the Commission will continue the rulemaking process, including additional considerations of rules governing technical interoperability among public safety networks and between public safety networks and commercial deployments, either through partnerships or in roaming relationships. *We expect these early waiver-based efforts to provide us with valuable insight into this process.*¹²

The valuable insight to be gained from the early builders will benefit FirstNet in its consideration of the very same issues that were before the Commission when it granted the waivers. The benefits from investments of time and resources resulting under the Commission’s plan will be realized under the new legislation and by the new nationwide licensee, FirstNet.

In fact, the goal of learning from the early deployments has begun to be realized. The early builders have formed an active and vibrant working group, the OAC, which meets weekly to discuss developing issues and to learn from each other’s experiences as members begin their deployments. A smaller group of the seven BTOP grantees has also been formed as a subcommittee of the OAC, which meets weekly to discuss issues relevant to the BTOP deployments. The valuable lessons of these waiver recipients can be expected to expand and will benefit FirstNet in its consideration of technical and operational network issues.

¹¹ *Id.*

¹² *Id.* at ¶59 (emphasis added).

New Mexico is well positioned to serve as an operational test bed to assist FirstNet in its future deliberations regarding network development. As shown above, SONM has made extensive progress in moving forward with planning and deployment of a broadband network. Using its BTOP funding, New Mexico is planning to deploy initially in Albuquerque and Santa Fe. Extensive work in assessing user needs has been completed and New Mexico expects to release a RFP shortly for procurement to deploy the network. In addition to the BTOP funding, and because New Mexico has been granted a waiver and lease for use of the 700 MHz public safety broadband spectrum, the New Mexico legislature very recently made a \$1.5 million planning appropriation to be used to perform a holistic assessment of the State's public safety radio communications network that will directly assess the needs and impact related to the 700 MHz broadband deployment, including back-haul capability. Also, as noted above, the City of Albuquerque Police Department has indicated its commitment to being an anchor tenant on the network, with the understanding that the network must be deployed within the next two years.

However, if the lease is not continued, New Mexico's BTOP grant will be jeopardized, as continuation of the lease is a condition of the grant. Additionally, the City of Albuquerque, the second-largest public-safety entities in the state, may be lost as a tenant and user on the network. In short, it is imperative that the New Mexico lease be continued so that New Mexico can continue to be a test bed for learning and development of the interoperable nationwide public safety broadband network for the benefit of the nationwide licensee, just as the Commission envisioned in granting the waiver.

Accordingly, New Mexico urges the Commission to extend its lease, as well as the leases of other waiver recipients, for a period of two years, recognizing that the technical and

operational lessons to be learned from early builders will be critical to developing the future nationwide, interoperable public safety wireless broadband network to be licensed to FirstNet.

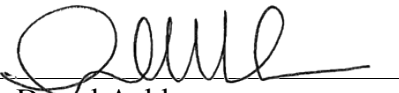
CONCLUSION

In view of the foregoing, the State of New Mexico requests the Commission to extend its lease for a two year period, with the lease to include existing and D Block public safety spectrum, in connection with the assignment of the public safety license to FirstNet.

Respectfully Submitted,

STATE OF NEW MEXICO

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